

2024:PHHC:050795
110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
RSA-3071-1994 (O&M)
Date of decision: 15.04.2024

Haryana State through Collector, Hisar

....Appellant

Versus

Vinod Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.J.S.Pannu, AAG, Haryana
Mr. Harsh Aggarwal, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the defendant (State of Haryana) assails the correctness of the concurrent findings of fact arrived at by the courts below, while decreeing the plaintiff's suit for the grant of decree of declaration with a consequential relief of permanent injunction directing the defendant to adjust amount of already recovered electricity duty. The plaintiff was granted exemption from paying electricity duty for a period of 5 years w.e.f 05.10.1981 to 04.10.1986 on the ground that he has set up a new industrial unit in September, 1986. The aforesaid exemption was withdrawn on the ground that in the industrial unit, he has used old machinery previously which was used by his father. Both the courts decreed the plaintiff's suit on the ground that the plaintiff has not been granted opportunity of hearing before passing the impugned order on 01.09.1986.

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith the First Appellate Court's record.

3. Learned counsel representing the State submits that principles of natural justice is a flexible tool in the hands of the court and in this case unless the plaintiff shows prejudice, the order should not be set aside.

4. This Court has considered the submissions made by the learned counsel representing the parties.

5. In this case, the allegation against the respondent is that he has used old machinery of his father. However, such order has been passed without giving opportunity to the plaintiff to prove that the machinery is new. In this case, the facts were required to be proved by the plaintiff. He has to be given opportunity to establish that the machinery utilized for starting new industrial unit was new one and does not belong to his father. In these circumstances, the argument of the learned counsel representing the State lacks substance.

6. However, the courts below erred in failing to give liberty to the State to pass fresh order after granting opportunity to the plaintiff. Hence, the impugned judgments passed by the courts below are modified and the State shall have liberty to pass fresh order after granting opportunity of hearing to the plaintiff.

7. Disposed of.

8. All the pending miscellaneous applications, if any, are also disposed of.

15.04.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE